

880.

APPROVAL, BONDS OF ASHTABULA COUNTY—\$40,500.00.

COLUMBUS, OHIO, September 17, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

881.

APPROVAL, BONDS OF MORROW COUNTY—\$1,363.30.

COLUMBUS, OHIO, September 17, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

882.

TAX AND TAXATION—UNINCORPORATED BANK—HOW COUNTY
AUDITOR SHOULD COMPUTE TAX.*SYLLABUS:*

The county auditor in fixing the value of the property representing the capital employed in an unincorporated bank under the provisions of Section 5412, General Code, shall deduct from the aggregate sum so found the value of the real estate included in the statement of resources as it stands on the duplicate; but where the value of said real estate as it stands on the duplicate exceeds the value of the property representing the capital employed by said bank, there is no property of such bank other than said real estate subject to tax.

COLUMBUS, OHIO, September 17, 1929.

HON. A. M. RODGERS, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your recent communication in which you state:

“In a return of one of the unincorporated banks of Allen County this proposition comes up: The capital stock is \$10,000.00, the real estate value is more than enough to offset the capital stock.

The question is, should this bank be taxed or not, and if so how much? The auditor holds that the bank should pay on \$10,000.00 which is the value of the capital stock.

I would appreciate your opinion on this matter as the principle involved has been in issue several times.”

In a supplemental statement the county auditor in submitting a copy of the

report of the bank, says: "If I should follow out the regular schedule that I use in valuing banks, of course the bank should not be taxed."

The answer to your inquiry involves the consideration of Sections 5411 and 5412, General Code. The first of said sections reads as follows:

"The cashier of each incorporated bank, and the cashier, manager or owner of each unincorporated bank, shall return to the auditor of the county in which such bank is located, between the first and second Mondays of May, annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank at the close of business on the Wednesday next preceding the said second Monday, with a full statement of the names and residences of the stockholders therein, the number of shares held by each and the par value of each share, and of the amount of capital employed by unincorporated banks, not divided into shares, and the name, residence and proportional interest of each owner of such bank."

The report herein provided for requires a statement in detail, under appropriate heads, of the resources and liabilities of the bank.

Section 5412 requires the county auditor to fix the value of bank shares or property, and reads as follows:

"Upon receiving such report the county auditor shall fix the total value of the shares of such banks, and the value of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, each, according to their true value in money, and deduct from the aggregate sum so found, of each, the value of the real estate included in the statement of resources as it stands on the duplicate. Thereupon he shall make and transmit to the annual state board of equalization for banks a copy of the report so made by the cashier, manager or owner with the valuation of such shares or property representing capital employed as so fixed by the auditor."

This section requires the county auditor to fix the value of the property representing the capital employed by unincorporated banks according to its true value in money, and deduct from the aggregate sum, the value of any real estate included in the statement of resources as it stands on the tax duplicate. It is the value of the real estate as it stands on the tax duplicate and not the value of the real estate as carried upon the books of the company that is to be deducted from said aggregate sum.

In the case of *Commissioners of Franklin County vs. The Commercial National Bank of Columbus, Ohio, et al.*, 113 O. S. 37, the court in construing Section 5412, General Code, had before it the question of whether the book value or the value as shown on the tax duplicate should be deducted and it was held as stated in the syllabus that:

"In fixing the value of bank shares under the provisions of Section 5412, General Code, the county auditor should disregard the value of real estate appearing on the books of the bank and fix the value thereof as assessed on the tax duplicate. The purpose of said section is the ascertainment of the value of the shares without regard to the book value of the real estate, having due regard only to appraised value of the real estate as it appears upon the auditor's duplicate."

In the opinion, Jones, J. stated as follows:

"Stating this claim in another form, the contention that the Tax Commission upheld was, in effect, that the book value of the real estate contained in the resources should be disregarded in fixing the value of the shares, and that the duplicate value of the real estate only should be considered; that, if this course be pursued, Section 5412, General Code, will be fully complied with.

Thus:

Total aggregate shown by the books.....	\$1,549,500 00
Deduct book value of real estate.....	266,570 00
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Value of shares.....	\$1,282,930 00
Adding to this sum the duplicate value of the real estate.....	181,930 00
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	\$1,464,860 00

The last total is the amount which the Tax Commission found represented the value of the shares with duplicate value of the real estate included; and by deducting therefrom the duplicate value assessed against the real estate there would be left a balance of \$1,282,930 for taxation on the shares."

In the case of *The Milford National Bank of Milford, Ohio, vs. Cleona Searles, Auditor of Clermont County, Ohio, et al.*, 27 O. C. A., 407, the syllabus reads:

"Where real estate belonging to a bank is carried on its books at a valuation less than that appearing on the tax duplicate, the auditor or Tax Commission in considering the value of the bank's resources for the determination of the tax value of its shares are justified in adding to the net resources shown in its report, the amount such value of the real estate as it appears on the tax duplicate exceeds its value as shown on the books of the bank."

And at page 409 the opinion states:

"The real estate of the bank is valued and listed for taxation on the regular real estate tax duplicate of the county under the general laws relating thereto just as all other real estate is valued and listed (Section 5409, General Code). If this particular real estate belonging to the bank is there listed at too high a valuation the law provides a method for securing a proper reduction. This valuation can not be changed or affected by any action taken in the valuation of the shares of stock in the bank.

The provision requiring the deduction from the aggregate valuation of the shares of stock of the value of the real estate, included in the statement of resources as it stands on the duplicate, is for the purpose of preventing double taxation on that part of the resources invested in real estate on which taxes are paid as such.

The bank can carry this real estate upon its books at such value as it may deem proper, but if that amount is less than the amount which stands on the tax duplicate, then to the extent of such excess it is not included in the statement of resources. The deduction to be made is the value on the duplicate which is included in the statement of resources."

Your county auditor inclosed an exact duplicate of the return and report of the condition of the bank, dated February 26, 1928. Said statement reads as follows:

"RESOURCES

Loans on real estate.....		\$13,285 00
Loans on collateral.....		7,821 27
Other loans and discounts.....		86,758 42
Overdrafts.....		56 45
Other bonds, stocks and securities.....		265 00
Banking house and lot.....		4,000 00
Furniture and fixtures.....		3,150 00
Other real estate owned by bank.....		28,470 00
Cash items.....		23 07
Due from Reserve Banks and cash in vault (Items 16-18-19-20-21)	\$12,955 80	
Exchanges for clearing.....	25 00	12,980 80
Profit and loss.....		985 41
Total		\$157,795 42

LIABILITIES

Capital		\$10,000 00
Individual deposits subject to check.....	\$66,779 56	
Time certificates of deposits.....	53,884 72	
Savings deposits.....	27,129 43	147,793 71
Other liabilities.....		1 71
Total		\$157,795 42"

It is noted that the total liabilities of said bank amount to \$157,795.42; that the total resources amount to the same, but included in the statement of resources is the banking house and lot valued at \$4,000 and other real estate owned by the bank amounting to \$28,470, or a total of \$32,470. This is a so-called book value or the value shown on the books of said bank, while the value appearing upon the tax duplicate of said real estate is \$16,770. According to the bank statement filed with the county auditor the amount of capital employed, or property reported, is \$10,000. The actual value of the furniture and fixtures is \$3,150.

It is evident that the value of the real estate owned by the bank as carried on its books is far in excess of the value on the tax duplicate, said excess amounting to \$16,700. It is also evident that the duplicate value of the real estate owned by the bank is in excess of the value of the property representing the capital employed, according to its true value in money. Therefore, the value of the real estate included in the statement of resources, as it stands on the tax duplicate being in excess of the aggregate sum indicated by the value of the property representing the capital employed according to its true value in money, may not be deducted from said aggregate sum. In other words, the duplicate value of the real estate being greater than the value of the property representing the capital employed, the only basis for a tax is the real estate.

It is therefore my opinion, specifically answering your question, that the county auditor in fixing the value of the property representing the capital employed in an unincorporated bank under the provisions of Section 5412, General Code, shall deduct from the aggregate sum so found the value of the real estate included in the statement of resources as it stands on the duplicate; but where the value of said real estate as it stands on the duplicate, exceeds the value of the property representing the

capital employed by said bank, there is no property of such bank other than said real estate subject to tax.

Respectfully,
GILBERT BETTMAN,
Attorney General.

883.

DISAPPROVAL, NOTES OF SOLON VILLAGE, CUYAHOGA COUNTY—
\$100,000.00.

Re: Notes of Solon Village, Cuyahoga County, Ohio, \$100,000.00.

COLUMBUS, OHIO, September 17, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—I have examined the transcript relative to the above issue of notes. These notes are issued in anticipation of the levy of assessments and the issuance of bonds to pay the cost of seven street improvements.

It appears that the ordinance authorizing the issuance of notes of the village in anticipation of the collection of special assessments was introduced and given its first reading on March 4, 1929, whereupon, pursuant to the provisions of Section 4224, a motion was made and seconded that the rule requiring the reading of an ordinance for three separate days be suspended and this ordinance be placed upon the second and third readings. This motion was not carried by a three-fourths majority as required by Section 4224, the roll call disclosing that four councilmen voted for the motion and two against the motion; whereupon Ordinance No. 1929-148 was restored to its first reading. At the meeting of council of March 18, 1929, Ordinance 1929-148 was read the second time and on April 1, 1929, at a regular meeting of council of the village, after the third reading, the ordinance failed to carry, three members of council voting for the ordinance and three voting against it. This ordinance authorized the issuance of notes of the village in the amount of \$427,300.00, being the engineer's estimate of the cost of the improvements in question.

The minutes of a special meeting of council held on April 5, disclose that, upon motion to reconsider Ordinance No. 1929-148 authorizing notes as aforesaid, which motion was seconded and duly carried, a vote was taken on the question of whether or not the ordinance should be placed on final reading and passed, which resulted in four affirmative and two negative votes. There is some question in my mind as to the regularity of the procedure of council in passing an ordinance which has failed to carry, without complying with the provisions of Section 4224, General Code, relative to reading the ordinance on three different days or dispensing with such rule by a three-fourths vote. In this case, the ordinance had been read on three different days, but after the third reading, it failed to pass and upon such failure it may be contended, in view of the strict construction placed by the courts upon Section 4224, General Code, as hereinafter commented upon, that the ordinance is in the same position as if it had not been introduced and before the reconsideration of the vote may be had, it may be necessary to either re-read the ordinance on three different days as provided or suspend the rule by three-fourths vote.

The above ordinance authorizing notes as aforesaid was amended by Ordinance 1929-162 on May 20, which amending ordinance was repealed by council at a special meeting on June 12, at which time Ordinance 1929-168 was passed, amending Ordi-